WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 2000

ENROLLED
Committee Substitute for
SENATE BILL NO. 592

(By Senators Tomblin, Mr. President, and Sprouse, by Request of the Executive)

PASSED March 11, 2000
In Effect July 1, 2000
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 592

(By Senators Tomblin, Mr. President, and Sprouse, by request of the Executive)

[Passed March 11, 2000; to take effect July 1, 2000.]

AN ACT to amend and reenact section fifteen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to records management and preservation of county records; alternate storage of county records; creating a records management and preservation board; setting the qualifications of and providing for the appointment of members; providing for reimbursement of expenses; providing that the director of the division of archives and history section shall be the staff to the board; giving the board rule-making authority; providing for the study of records management needs of state agencies, providing for grants to counties; and providing for the termination of the board.

Be it enacted by the Legislature of West Virginia:
That section fifteen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-15. Records management and preservation of county records; Alternate storage of county records; Records management and preservation board created; qualifications and appointment of members; reimbursement of expenses; staffing; rule-making authority; study of records management needs of state agencies; grants to counties; termination of board.

The Legislature finds that the use of electronic technology and other procedures to manage and preserve public records by counties should be uniform throughout the state where possible.

(a) The governing body and the chief elected official of any unit of each county, hereinafter referred to as a county government entity, whether organized and existing under a charter or under general law, shall promote the principles of efficient records management and preservation of local records. Such county governing entity may, as far as practical, follow the program established for the uniform management and preservation of county records as set out in a rule or rules proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as proposed by the records management and preservation board established herein.

(b) In the event any such governing body or the chief elected official of a unit of a county government entity decides to destroy or otherwise dispose of a county record, the governing body or such chief elected official may, prior to destruction or disposal thereof, offer the record to the director of the section of archives and history of the
division of culture and history for preservation of the
record as a document of historical value. Unless autho-
ized by the supreme court of appeals, the records of
courts of record and magistrate courts are not affected by
the provisions of this section.

(c) A preservation duplicate of a county government
entity record may be stored in any format, approved by the
board as hereinafter established, where the image of the
original record is preserved in a form, including CD-ROM
and optical image storage media in which the image
thereof is incapable of erasure or alteration, and from
which a reproduction of the stored record may be retrieved
which truly and accurately depicts the image of the
original county government record.

Except for those formats, processes and systems used for
the storage of records on the effective date of this section,
no alternate format for the storage of county government
entity records described in this section is authorized for
the storage of county government entity records unless the
particular format has been approved pursuant to a legisla-
tive rule promulgated by the board as herein created in
accordance with the provisions of chapter twenty-nine-a
of this code. The board as herein established may prohibit
the use of any format, process or system used for the
storage of records upon its determination that the same is
not reasonably adequate to preserve the records from
destruction, alteration or decay.

Upon creation of a preservation duplicate which stores
an original county government entity record in an ap-
proved format in which the image thereof is incapable of
erasure or alteration, and from which a reproduction of
the stored record may be retrieved which truly and
accurately depicts the image of the original record, the
county government entity may destroy or otherwise
dispose of the original in accordance with the provisions
(d) There is hereby created a records management and preservation board for county government entities, to be composed of nine members.

(1) Three members shall serve ex officio. One member shall be the commissioner of the division of culture and history who shall be the chairman of the board. One member shall be the administrator of the supreme court of appeals. One member shall be the administrator of the governor's office of technology or his or her designee.

(2) The governor shall appoint six members of the board with the advice and consent of the Senate. Not more than five appointments to the board may be from the same political party and not more than three members may be appointed from the same congressional district. Of the six members appointed by the governor: (i) Three appointments shall be county elected officials, one of whom shall be a clerk of the county commission, one of whom shall be a circuit court clerk and one of whom shall be a county commissioner, to be selected from a list of nine names, including the names of three clerks of county commissions and three circuit court clerks submitted to the governor by the West Virginia association of counties and the names of three county commissioners, submitted to the governor jointly by the West Virginia association of counties and the West Virginia county commissioners association; (ii) one appointment shall be a county prosecuting attorney to be selected from a list of three names submitted by the West Virginia prosecuting attorneys institute; and, (iii) one appointment shall be an attorney licensed in West Virginia and in good standing as a member of the state bar with experience in real estate and mineral title examination, to be selected from a list of three names submitted by the
state bar; and (iv) one appointment shall be a representa-
tive of a local historical or genealogical society;

(e) The members of the board shall serve without com-
pensation but shall be reimbursed for all reasonable and
necessary expenses actually incurred in the performance
of their duties as members of the board. In the event the
expenses are paid, or are to be paid, by a third party, the
member shall not be reimbursed by the state.

(f) The staff of the board shall consist of the director of
the archives and history section of the division of culture
and history and such staff as he or she may designate to
assist him or her.

(g) On or before the first day of July, two thousand one,
the board shall propose rules for legislative approval in
accordance with the provisions of article three, chapter
twenty-nine-a of this code to establish a system of records
management and preservation for county governments:
Provided, That, for the retention and disposition of records
of courts of record and magistrate courts, the implementa-
tion of the rule is subject to action of the West Virginia
supreme court of appeals. The proposed rule or rules shall
include provisions for establishing a program of grants to
county governments for making records management and
preservation uniform throughout the state. The board is
not authorized to propose or promulgate emergency rules
under the provisions of this section.

(h) On or before the first day of April, two thousand two,
the board, in cooperation with the administrator and state
executive agencies under the general authority of the
governor, shall conduct a study of the records management
and preservation needs of state executive agencies. Should
the board determine a need for a uniform records manage-
ment and preservation system for such agencies, it shall
recommend that the administrator propose rules for
legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to provide for the implementation of a uniform records management and preservation system for state executive agencies.

(i) In addition to the fees charged by the clerk of the county commission under the provisions of section ten, article one, chapter fifty-nine of this code, the clerk shall charge and collect an additional one dollar fee for every document containing less than ten pages filed for recording and an additional one dollar fee for each additional ten pages of such document filed for recording. At the end of each month, the clerk of the county commission shall deposit into the special public records and preservation account as herein established in the state treasury all fees collected: Provided, That the clerk may retain not more than ten percent of such fees for costs associated with the collection of the fees. Clerks shall be responsible for accounting for the collection and deposit in the state treasury of all fees collected by such clerk under the provisions of this section.

There is hereby created in the state treasury a special account entitled the “public records and preservation revenue account”. The account shall consist of all fees collected under the provisions of this section, legislative appropriations, interest earned from fees, investments, gifts, grants or contributions received by the board. Expenditures from the account shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand one, expenditures are authorized from collec-
Subject to the above provision, the board may expend the funds in the account to implement the provisions of this article. In expending funds from the account, the board shall allocate not more than fifty percent of such funds for grants to counties for records management, access and preservation purposes. The board shall provide for applications, set guidelines and establish procedures for distributing grants to counties including a process for appealing an adverse decision on a grant application. Expenditures from the account shall be for the purposes set forth in this section, including the cost of additional staff of the division of archives and history.

(j) The board shall terminate on the first day of July, two thousand two, pursuant to the provisions of article ten, chapter four of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Takes effect July 1, 2000.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within... this the 4th Day of... 2000.

Governor
PRESENTED TO THE
GOVERNOR
Date: 3/13/00
Time: 4:10 p.m.